No. 80-1059

In the Supreme Court of the United States

OCTOBER TERM, 1980

LESLIE H. ALLOTT, JR.,

Petitioner,

vs.

RAYMOND SICINSKI, et al.,

Respondents.

BRIEF OPPOSING PETITON FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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STATEMENT OF THE CASE

Petition Number 80-1059 arises from the order of the United States Court of Appeals for the Seventh Circuit in *Allott* v. *Sicinski,* 78-C-4712, entered June 19, 1980. (*Petition,* Appendix at 7a.) Petitioner's motion for rehearing was denied on September 23, 1980. (*Petition,* Appendix at 1a.) Respondent-Attorney Registration and Disciplinary Commission submits the following in opposition to the *Petition.*

I.

REASONS FOR DENYING THE WRIT

THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DENYING PLAINTIFF'S POST-JUDGMENT MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT

Petitioner argues that he has a right to amend his complaint because only non-responsive pleadings have been filed by the defendants. Petitioner has mischaracterized the issue presented. The question raised in this action is whether Petitioner has a right to amend his complaint once the court has entered a judgment of dismissal.

Petitioner has no right to file an amended complaint once a judgment of dismissal has been entered. Whether leave to amend will be granted is within the discretion of the trial court. *Hurd* v. *Dimento,* 440 F.2d 1322, 1323 (1st Cir. 1971), *cert. denied,* 404 U.S. 862, *reh. denied,* 404 U.S. 961 (1971).

Since judgment has already been entered, Petitioner must reopen or vacate the judgment before a motion to amend the complaint can be entertained. *Chrysler Corp.* v. *Lakeshore Commercial Finance,* 66 F.R.D. 607, 608 (E.D.Wis. 1975). Therefore, the district court properly treated Petitioner's motion as a motion to vacate the judgment pursuant to Fed. R. Civ. Pro. 59(e) and as a motion to amend the complaint. Fed. R. Civ. Pro. 59(e) requires a motion to vacate or alter the judgment to be made within ten days of entry of judgment. Under Fed. R. Civ. Pro. 6(b), the district court has no discretion to extend the

ten-day period in which the motion can be made. *Motteller* v. *J. A. Jones Construction Co.*, 447 F.2d 954, 955 (7th Cir. 1971).

Petitioner presented his motion to amend the complaint twenty-one days after entry of judgment. Accordingly, the district court denied the motion as untimely made. Thus, the district court's denial of Petitioner's motion was mandated by Fed. R. Civ. Pro. 6(b) and was not an abuse of discretion.

II.

COUNT 53 OF PETITIONER'S COMPLAINT DOES NOT STATE A CAUSE OF ACTION UPON WHICH RELIEF COULD BE GRANTED AGAINST THE COMMISSION

Petitioner argues that the Commission has denied him due process and equal protection of the law by exonerating six attorneys whom he has charged with professional misconduct. The regulation of the practice of law is a function of state government. Petitioner has no right under the Federal Constitution to require the Commission to process his complaint. *Saier* v. *State Bar of Michigan*, 293 F.2d 756, 759 (6th Cir. 1961), *cert. denied*, 368 U.S. 947 (1961). The only right which Petitioner has is the right to complain to the Commission. The Commission does not have a duty to recommend discipline in every case. ILL. ANN.STAT. ch. 110A, §§751 *et seq.* (Smith-Hurd). As a result, the district court properly found that Petitioner's complaint did not state a cause of action upon which relief could be granted.

CONCLUSION

For the reasons stated above, the petition for writ of certiorari should be denied.

Respectfully submitted,

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Catherine M. Littrell, Senior Law Student, licensed pursuant to Rule 711 of the Supreme Court of Illinois, University of Illinois, assisted in the research and preparation of this brief.